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OGC 75-2227
12 June 1975.

OGC Has Reviewed

MEMORANDUM FOR: Chief, Security Support Division, OS

SUBJECT : Proposed Regulations for Polygraph Examiners and
Polygraph Schools in Virginia

1. This is in response to your request that this Office examine sections 54-916 through 54-922 of the Code of Virginia which relate to the licensing of polygraph examiners and polygraph schools in Virginia as well as the proposed regulations POR. 22-1 through 22-27 to be issued by the Department of Professional and Occupational Regulation. You have indicated that since 1971 the CIA polygraph training program has been included in the state of Virginia's list of approved schools and as a result Agency polygraph examiners could meet the requirements for a state license. You expressed disquiet, however, about the effect of the proposed regulations and the utility of seeking accreditation.

2. As a threshold point it should be clear that as a result of the supremacy clause of the United States Constitution, article 6, clause 2, a federal employee working as a polygraph examiner would not be required to submit to examination by state authorities concerning his competence and pay a license fee before performing his official duty. Moreover, the Federal Government may train its employees without regard to state educational licensing requirements. On the other hand, it has been Government policy to comply with state regulations when possible and if the Agency wants its polygraph examiners to have state licenses and desires its training program to be accredited, there would be no legal objection to such a policy.

3. In the event that the Agency adopts this latter course of action, two provisions in the proposed regulations might be potentially troublesome:

- a. POR. 22-25 provides that "Virginia schools shall be subject to an initial on-site inspection and an annual reinspection prior to approval." If the inspection merely consisted of examination of the physical facilities, curriculum outlines, and staff qualifications, little difficulty would be caused. If the inspector sought more detailed examination of classified aspects of the curriculum, problems would arise. It might be useful to seek revision of the proposed regulation to define inspection in such a way as to exclude examination of classified aspects of Government training.

Nevertheless, focusing public attention on that point at this time may be counterproductive, particularly since informal arrangements with Richmond could be worked out later.

- b. POR. 22-2 C provides that "[u]pon receipt of an application for an examiner's license, the Director shall investigate each application, and no license will be issued unless said investigation is complete." If state investigation of Agency personnel is objectionable, we could seek a change in the proposed regulation to the effect that state investigation may be waived if the applicant had been subject to a federal security investigation within a year of such application, and had been granted a security clearance.

4. Other changes in the proposed regulations might be sought for reasons of convenience.

- a. POR. 22-2 A provides that "no application fee shall be charged to any examiner in the full-time employ of any federal, state or local police department." If the word "agency" was placed after the word "federal," CIA employees could be exempted from the application fee.
- b. POR. 22-3 C provides that "an examiner whose license has expired may, at any time within five years after the expiration thereof, obtain a renewal by ... paying a renewal license fee for each year since the expiration of his license. Since our polygraph examiners may be transferred out of state or out of country for a tour of duty, we might wish a revision of this provision to provide that no fee must be paid during any year in which a federal polygraph examiner was serving a tour of duty outside of Virginia.

5. I have learned from Bob Andrews, Senior Advisor to the General Counsel at the Department of Defense, that the Army will be attending the hearings on the proposed regulations on Monday, 16 June in Richmond, Virginia. The Army representative will attempt to have a blanket exemption for federal employees and military personnel written into the regulation. Mr. Andrews indicated that if CIA did not wish to take an exposed position on this issue the Department of the Army representative could raise any points CIA wished to make without any attribution to this Agency.



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Office of General Counsel